

Attorney's Docket No. 042253/204722

PATENT

In The United States Patent And Trademark Office

Appl. No.: 09/693,512
Applicant(s): Joel E. Short et al.
Filed: October 20, 2000
Art Unit: 2145
Examiner: Thomas Duong
Title: GATEWAY DEVICE HAVING AN SML INTERFACE
AND ASSOCIATED METHOD

Confirmation No.: 7933

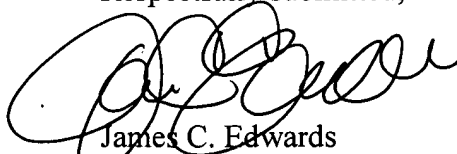
Docket No.: 042253/204722
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**APPEAL BRIEF TRANSMITTAL
(PATENT APPLICATION – 37 C.F.R. § 41.37)**

1. Transmitted herewith is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on January 14, 2005.
 2. ☒ Applicant claims small entity status.
 3. Pursuant to 37 C.F.R. § 41.20(b)(2), the fee for filing the Appeal Brief is:
☒ small entity \$250.00
☐ other than small entity \$500.00
- Appeal Brief fee due \$250.00
- ☒ Any additional fee or refund may be charged to Deposit Account 16-0605.

Respectfully submitted,



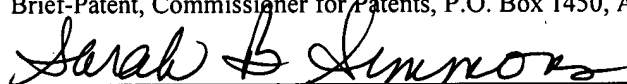
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A handwritten signature in cursive script, reading "Sarah B. Simmons", written over a horizontal line.

Sarah B. Simmons



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APPEAL BRIEF UNDER 37 CFR § 41.37

This Appeal Brief is filed pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" filed January 14, 2005 and received by the Patent Office on January 18, 2005.

1. ***Real Party in Interest.***

The real party in interest in this appeal is Nomadix, Inc., the assignee of the above-referenced patent application.

2. ***Related Appeals and Interferences.***

There are no related appeals and/or interferences involving this application or its subject matter.

3. ***Status of Claims.***

The present application currently includes Claims 1-18, which all stand rejected.

4. ***Status of Amendments.***

Amendment after final filed on November 15, 2004 was not entered because the Examiner believed that further consideration and/or searching would be required of independent Claims 1 and 14 and the scope of dependent claims 2-7 and 15-18 had been changed.

5. ***Summary of Claimed Subject Matter.***

The invention, as claimed, provides for a gateway device and associated methods that facilitate communications with external devices by utilizing a uniform communications format. As such, the gateway device is not required to communicate with each external device according to a unique format defined by the respective external device. Accordingly, the gateway device and associated method of the present invention improve communications between the subscriber computer, gateway device and various external devices, such as billing and content servers, property management systems, external AAA servers and the like.

According to one claimed embodiment of the present invention (Claim 1), a gateway device that provides subscriber computers transparent network access is provided. Transparency as defined in the specification at page 5, lines 5 and 6, allows for network access to be provided to the subscriber computers without the need for reconfiguration, or more particularly in this instance, without requiring the subscriber computers to support XML commands and responses. The gateway device, as claimed, is located within the network at a network access point and includes a subscriber interface for adapting to subscriber computers that are connected to the gateway device. The subscriber interface facilitates communications between the subscriber computers and at least one network or on-line service. According to this embodiment of the present invention, the gateway device also includes an XML interface for communicating with a plurality of external devices via a series of XML commands and responses.

The gateway device according to this first claimed embodiment of the invention may also include an internal web server for communicating with both the XML interface and the internet to thereby facilitate XML-based communications between the gateway device and external devices connected to the internet (dependent Claim 2). As such, the gateway device supports

communications involving the subscriber computer and the external devices without ever requiring the subscriber computer to support XML commands and responses.

Typically, the XML interface includes a parser front end, a parser section and a building section for appropriately handling XML commands that are received by the gateway device and for sending appropriate responses. The parser front end determines the type of operation requested by the external device (dependent Claim 3). The parser section is responsive to the parser front and organizes elements parsed from either an XML command or an XML response (Claim 4). Once parsed, the XML command is executed. Typically, the parser section passes at least some of the elements to a requested application. Prior to passing the elements to a requested application, however, the parser section typically nests the elements to be passed within an application programming interface (API) wrapper (Claim 5). The building section prepares responses to requests received by the gateway device (Claim 6). Typically, the building section assembles results returned by requested application into an XML response (Claim 7).

In another device embodiment of the present invention (Claim 8), a gateway device that provides subscriber computers transparent network access is provided. The gateway device, as claimed, is located at a network access point and supports communications involving the subscriber computers and the external devices without requiring the subscriber computers to support XML commands and responses. The gateway device includes a subscriber interface for adapting to subscriber computers that are connected to the gateway device to facilitate communications between the subscriber computers and at least one network. The gateway device also includes an XML interface that includes a parser front end, a parser section responsive to the parser front end and a building section for communicating with an external device via a series of XML commands and responses. The gateway device also includes an internal web server for communicating with both said XML interface and the Internet to thereby facilitate XML-based communications between the gateway device and external devices connected to the Internet.

The present invention also is defined by a method for communicating between the gateway device and external device via the internet (Claim 14). According to this aspect of the present invention, the subscriber computer is provided access to at least one network via the gateway device and the gateway device adapts to the subscriber computer to facilitate

communication between the subscriber computer and at least one network. An XML command is initially received at the gateway device from the external device, such as the billing and content server (Claim 15). The XML command is then parsed, and the parsed XML command is executed, such as by being passed to a respective application program (Claim 17), such as the AAA server for performing the requested function, such as a subscriber management function. Prior to passing the parsed XML command to the respective application program, however, the elements to be passed to the requested application are preferably nested within an API wrapper (Claim 18). Upon completion of the requested function, the application program issues a response that is received by the gateway device and that is then included within an XML response transmitted from the gateway device to the external device.

As such, the gateway device and associated method of the present invention facilitate communications between the subscriber computer, the gateway device and a variety of external devices, such as external billing and content servers, property management systems and external AAA servers. In this regard, the gateway device can communicate with each of these various external devices in a uniform manner via a series of XML commands and responses, thereby dramatically reducing, if not eliminating, the instances in which the gateway device would have to communicate with an external device according to the unique format established by the external device. As a result, the design, implementation and operation of the gateway device should be considerably simplified. However, the gateway device and associated method of the present invention permit the subscriber computer to enjoy the benefits of the common XML command and response format without ever having to be reconfigured to support XML.

6. *Grounds of Rejection to be Reviewed on Appeal.*

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 6,453,361, issued to Morris et al., in view of United States Patent No. 6,226,675, issued to Meltzer et al. In particular, with regard to the independent claims, the Examiner alleges that the '361 Morris reference teaches a subscriber interface that is connected to a gateway device. The Examiner also alleges that the gateway device of the '361 Morris reference teaches

that the gateway device is located at an access point in the network and provides subscriber computer access control. The Examiner acknowledges that the '361 Morris patent does not teach an XML interface and, therefore, relies on the '675 Metzler reference for a teaching of an XML interface for communicating with an external device via a series of XML commands and responses. The Examiner further alleges that it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the Metzler teaching with the Morris teaching to, "facilitate interactions amongst diverse platforms in a communications network by eliminating prior agreement on industry wide standards or custom integration". Additionally the Examiner asserts that, "such systems should encourage incremental path to business automation, to eliminate much of the time, cost and risks of traditional systems integration". The Examiner relies on the '675 Metzler patent, at Column 2, lines 18 – 25, for the motivation to combine.

7. *Argument.*

The present invention is a gateway device and an associated method that facilitates communication with external devices by utilizing a uniform communications format (i.e., XML). As such, the gateway device is not required to communicate with each external device according to a unique format defined by the respective external device. The gateway device is located at a network access point, such that subscriber computers desiring to access any and all networks are required to gain network access through the gateway device. Thus, the benefit that is derived from the present invention is that the subscriber computers (i.e., clients or hosts) can transparently communicate with all the external devices without having to support the uniform communications format (i.e., XML). In effect, the subscriber computers are not required to be reconfigured or otherwise add or change software to be able to communicate with external network devices. Accordingly, the gateway device and associated method of the present invention improve communications between the subscriber computer, gateway device and various external devices, such as billing and content servers, property management systems, external AAA servers and the like.

A. Brief Summary of Argument

As a brief summary, Applicants note several issues with the Examiner proposed combination. Applicants respectfully submit that the proposed combination is improper and the proposed combination does not meet the claims. (1) Applicants submit that neither the primary reference (the '361 Morris patent) nor the secondary reference (the '675 Metzler patent) disclose a gateway device that includes an internal web server. This aspect of the invention is claimed in independent claim 8 and dependent claim 2 and provides for communicating with both the XML interface and the Internet to thereby facilitate XML-based communications between the gateway device and external devices connected to the Internet. Applicant can find no disclosure within either the primary or secondary reference for an internal web server used for the purpose as claimed. The Examiner made no specific citation in either of the issued Office Actions to disclosure in either the primary or secondary reference of an internal web server. (2) Applicants submit that the Examiner has not established the *prima facie* case for obviousness as required per 35 U.S.C. 35 § 103 (a) because the combined references do not teach the present invention and no motivation exists to combine the teachings of the cited references. (3) Applicants submit that neither the primary reference (the '361 Morris patent) nor the secondary reference (the '675 Metzler patent) disclose a gateway device that operates at a network access point, such that, the gateway device provides subscriber computers network access control. This aspect of the present invention is claimed in independent Claims 1, 8 and 14 and is a necessary requirement of the present invention for the purpose of providing XML translations to all external device communications, requiring such, that are located downstream from the access point. The '361 Morris patent discloses a gateway device/server that is located at a network site and grants access to a network site. The Examiner argues that since the gateway device controls access to servers at the network site it is therefore located at a "network access point". The Applicant asserts and illustrates below that the term "network access point" is well defined in the art of networking; that it is a point located prior to entry into the Internet or any other network service and that it does not encompass a "site access point".

B. The Proposed Combination Does Not Meet the Claims

1. The '361 Morris Patent and the '675 Metzler Patent Provide No Disclosure of an Internal Web Server for Communicating with both the XML Interface and the Internet to thereby facilitate XML-Based Communications between the Gateway Device and External Devices Connected to the Internet

Applicant respectfully argues that neither the '361 Morris patent nor the '675 Metzler patent provide any teaching of a gateway device that includes an internal web server for communicating with both the XML interface and the Internet to facilitate XML-based communication between the gateway device and the external devices connected to the Internet. Dependent Claim 1 and independent Claim 8 of the present invention define the gateway device of the present invention as including such an internal web server. An internal web server, designated as item 30 in Figure 3 of the present application and discussed in the specification beginning on page 11, line 10, processes HTTP streams that are received from external devices. The XML interface forms responses, which are placed onto the World Wide Web (WWW) by the internal web server of the gateway device for delivery to the external device.

The Examiner, in both the first Office Action rejection and the Final rejection, has summarily rejected both Claims 2 and 8 without referencing a disclosure of an internal web server within either the '361 Morris patent or the '675 Metzler patent.

The Applicant acknowledges that the '361 Morris patent discloses at Column 5, lines 42-43, that, "The gateway server 20 performs the function of a web server." However, the '361 Morris patent does not provide any further disclosure and, in particular provides no teaching as to how this function is performed and, in particular no teaching of *an internal* web server within the gateway device. Further, Claims 2 and 8 of the present invention are limited by the functions imposed upon the internal web server of the gateway device. As claimed, the internal web server communicates with both the XML interface and the Internet to facilitate XML-based

communications between the gateway device and external devices connected to the Internet. As noted by the Examiner, in both the first office Action and the Final Office Action, the '361 Morris patent does not explicitly teach an XML interface for communicating with a plurality of external devices via a series of XML commands and responses such that the gateway device, located at a network access point, supports communications involving the subscriber computers and the external devices without requiring the subscriber computers to support XML commands and responses. Therefore, it would be improper to argue that the web server function provided by the gateway device of '361 Morris patent teaches the functional limitations as claimed in Claims 2 and 8 of the present invention.

The '675 Metzler patent provides no disclosure of a gateway device including an internal web server.

As such, Applicant respectfully submits that dependent Claim 2 and independent Claim 8, which have been rejected under 35 U.S.C. § 103 (a) are not obvious by legal standards and, are thus, patentable. In addition, dependent Claims 9-13, which depend from Claim 8 and include further limitations must, as a matter of law, be patentable if the independent claim is found to be patentable.

2. The Applicant Respectfully Asserts that the Examiner has Not Established a *Prima Facie* Case of Obviousness

Applicant also respectfully asserts the Examiner has not made a *prima facie* case of obviousness as is required under United States patent law. Specifically, § 2142 of the MPEP states that, to establish a *prima facie* case of obviousness, three basic criteria must be met:

- 1) There must be some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings.

- 2) There must be a reasonable expectation of success.
- 3) The prior art reference or references must teach or suggest all claim limitations.

Applicant respectfully asserts that the requisite suggestion in the reference to combine the reference teachings is not present and that the combined references do not teach all of the claim limitations. Section 2143.01 of the MPEP states that the prior art must suggest the desirability of the claimed invention. Importantly, § 2143.01 also provides some restrictions in this regard. Specifically, the MPEP clearly states that 1) a proposed modification to the prior art cannot render the prior art unsatisfactory for its intended purpose; and 2) a proposed modification cannot change the principle operation of the reference. Applicants respectfully submit that the Examiner's proposed combination violates these rules. Specifically, the Applicant asserts that the prior art does not suggest the desirability of the present invention.

Additionally, the Applicant asserts that the '675 Metzler patent does not teach all the claim limitations of the XML interface.

Applicants first note that the Office Action attempts to find a suggestion in the references to justify their combination. The Office Action states that '675 Metzler patent teaches to "facilitate interactions amongst diverse platforms in a communication network by eliminating the prior agreement on industry wide standards or custom integration. Further such systems should encourage incremental path to business automation, to eliminate much of the time, cost and risks of traditional system integration." Applicant fails to appreciate how this statement provides the requisite motivation to combine the teaching of the '675 Metzler patent with the teachings of the '361 Morris patent. The '675 Metzler patent is concerned with providing an XML interface for documents being exchanged amongst trading partner networks. The XML interface of the '675 Metzler patent is not concerned with insuring transparency at the client level (i.e., not requiring the subscriber computer to be re-configured or otherwise altered) nor is the XML interface of the '675 interface concerned with limiting the complexity and functionality of *a gateway device* by not requiring *the gateway device* to support multiple communication formats.

Specifically, the Applicant teaches an invention that allows for an access gateway device to communicate with a diverse array of downstream network devices by implementing a uniform communications format, i.e., XML. As such, the invention allows subscriber computers that access networks transparently via the gateway device to communicate with these network devices without having to implement the unique format implemented by each and every external network device. The gateway device of the present invention provides transparent network access to the clients, otherwise referred to subscriber computers – this means that the subscriber computers can gain access to networks (i.e., the Internet, intranets, billing/accounting networks and the like) without having to be re-configured or without altering or adding additional applications/software. By implementing an XML interface at the network access gateway, the gateway device, as well as the subscriber computers, do not need to support the diverse communication formats implemented by network devices associated with the networks (i.e., Internet servers/devices, intranet servers/devices, billing/accounting servers/devices and the like).

Further, the XML interface of the '675 Metzler patent fails to disclose all of the limitations as claimed in the independent claims of the present invention. Specifically, Claims 1, and 8 require a gateway device that includes an XML interface that communicates with a plurality of external devices via a series of XML commands and responses such that the gateway device, located at a network access point, supports communications involving the subscriber computers and the external devices without requiring the subscriber computers to support XML commands and responses

The '675 Metzler provides no teaching of *a gateway device that includes an XML interface*. In addition, the XML interface disclosed in the '675 Metzler patent does not include all of the limitations as claimed in Claims 1 and 8. Specifically, the XML documents that are processed by the XML interface disclosed in the '675 Metzler patent do not teach or suggest XML documents that apply to supporting communications involving a subscriber computer. In the present invention, the gateway device controls the subscriber computer's access to the

network. Applicant respectfully maintains that the teachings of the '675 Metzler patent can not be extended to include control of a subscriber's access to a network.

In addition to the lack of motivation to combine provided by the '675 Metzler patent, the Applicant asserts that the '361 Morris patent provides no such motivation to combine. The '361 Morris patent describes and teaches architecture and methods for integrating photo-service based websites. Although the '361 Morris patent teaches meta-architecture, it does not facilitate or apply to access control to all networks that a subscriber desires access to, such as the Internet, intranets or the like. In the '361 Morris patent the gateway device, referred to as the "gateway server 18", provides conventional server type functions. Additionally, the Gateway server of the '361 Morris teaching resides on the opposite side of the internet, i.e., after the client devices have already gained access to the desired network, i.e. Internet or the like. In the present invention the gateway device provides access control and, typically, billing functions. As such, in the present invention, the gateway device must reside, and is defined as such within the independent claims, at a network access point, i.e., between the subscriber computer and the downstream networks, i.e., Internet, intranets, billing networks and the like.

Additionally, the '361 Morris patent requires that the client (i.e., the subscriber computer) be pre-configured to the gateway server in order to provide configuration-free connection to the Internet. The present invention provides for a Gateway device that provides transparent access for subscriber computers. In other words, subscriber computers can access networks via the gateway device without having to be pre-configured or without having to load/execute subscriber computer-side agents. The '361 Morris patent also mandates that the client send requests to the gateway server and then the gateway generate requests for the photo-service sites. This is directly contrary to the present invention, in which the subscriber computer connects directly to the network site, i.e., a web site, and then the network site contacts the gateway device via XML.

Thus, the Applicant respectfully finds no motivation within the references to combine and further finds that the references cited do not disclose all of the limitations as cited by the independent claims of the present invention.

As such, Applicant respectfully submits that all of the independent claims, which have been rejected under 35 U.S.C. § 103 (a), as well as the dependent claims that depend there from and have been rejected under 35 U.S.C. § 103 (a), are not obvious by legal standards and, are thus, patentable.

3. The Primary Reference ('361 Morris Patent) and the Secondary Reference ('675 Metzler Patent) do Not Disclose a Gateway Device that is Located at a Network Access Point in the Network.

Independent Claims 1, 8 and 14 include a key aspect of the present invention, specifically, that the gateway device is located at a network access point. By having the gateway device located at a network access point all of the subscriber computers are provided network access via the gateway device. Since the access point location of the gateway device insures that all of the external devices (e.g., servers located on the Internet, intranet servers, billing and accounting servers) must be downstream from the network access point (i.e., communication to and from an external device and a subscriber computer must go through the gateway device), the invention insures that the gateway device can provide XML interfacing for all external devices downstream from the subscriber computer. Therefore, because of the location of the gateway device and the fact that the gateway device is in communication all downstream external devices, the gateway device is able to communicate, via XML commands and responses, without having to execute, either at the gateway device or at the subscriber computer, the unique individual communication format specific to each individual external device.

The '361 Morris patent discloses a gateway server that is operated as a gateway to multiple network sites, as shown in Figure 1. The gateway device of the '361 Morris patent

does not disclose a gateway device that is located or operates at a network access point, such as at "service provider A 16" or "service provider B 18". The "image gateway server 18" serves as a gateway between "client devices 12" and various "photo-service sites 14". Thus, the gateway device of the '361 Morris patent is specific to providing access to the various photo-service sites. The Examiner relies on this reference for a teaching of a gateway device having a subscriber interface, as claimed in Claims 1 and 8 of the present invention. However, since the gateway device is operated downstream from the network access point, within the Internet, any subscriber interface that is executed at the gateway server is specific to the designated network sites interfacing with the gateway; i.e., specific to "photo-service sites 14". As such, the functionality of the subscriber interface can not be applied to other functionality within the server to support communication between the "client devices 12" and all other downstream external network devices (i.e., other servers on the Internet, intranet servers, billing/accounting servers or the like) located on the Internet or associated with some other networked service.

The Examiner asserts that it is well known in the art that a gateway device or server is often referred to as the access point to a network. The Applicant does not argue this point. However, the gateway device as claimed in the present invention is located at a network access point. It is well known in the art of network communication that a network access point is a point at which devices are granted access to *all other networks*; i.e., prior to accessing the Internet, an intranet or other networked services. It is also well known that network access points are associated with Internet Service Providers (ISPs). In the '361 Morris patent the gateway device/server provides access to a collection of various "photo-service sites 14". However, since this gateway is located and operated within the Internet infrastructure it does not and, more importantly, can not provide access control to all of the networks (Internet, intranet, accounting networks) accessed by the "client devices 12".

The '675 Metzler patent does not teach or suggest a gateway device that is implemented at the access point of network architecture to provide access control for subscriber computers. In addition, the '675 Metzler patent provides no teaching or suggestion of a gateway device

implemented for controlling the billing structure (Claim 15) of the networks accessed by the subscriber computers.

Since Independent Claims 1, 6 and 14 clearly require that the gateway device be located at a network access point within the network architecture and provides access control for the subscriber computers that are controlled by the Gateway, the Applicant believes that these claims are non-obvious and patentable. In addition, the dependent Claims that depend from Claims 1, 6 and 14 add further limitations to the independent claims and, as such, as a matter of law, if the independent claims are found patentable so too should the accompanying dependent claims.

8. ***Claims Appendix.***

The claims currently on appeal are as follows:

1. A gateway device that provides subscriber computers transparent network access, the device comprising:

a subscriber interface for adapting to subscriber computers that are connected to the gateway device to facilitate communications between the subscriber computers and at least one network; and

an XML interface for communicating with a plurality of external devices via a series of XML commands and responses such that the gateway device, located at a network access point, supports communications involving the subscriber computers and the external devices without requiring the subscriber computers to support XML commands and responses.

2. A gateway device according to Claim 1 further comprising an internal web server for communicating with both said XML interface and the internet to thereby facilitate XML-based communications between the gateway device and external devices connected to the internet.

3. A gateway device according to Claim 1 wherein said XML interface comprises a parser front end for determining the type of operation requested by the external device.

4. A gateway device according to Claim 1 wherein said XML interface comprises a parser section for organizing elements parsed from at least one of an XML command and an XML response and for passing at least some of the elements to a requested application.

5. A gateway device according to Claim 4 wherein said parser section also nests the elements to be passed to the requested application within an application programming interface (API) wrapper.

6. A gateway device according to Claim 1 wherein said XML interface comprises a building section for preparing responses to requests received by the gateway device.

7. A gateway device according to Claim 6 wherein said building section assembles results returned by a requested application into an XML response.

8. A gateway device that provides subscriber computers transparent network access, the device comprising:

 a subscriber interface for adapting to subscriber computers that are connected to the gateway device to facilitate communications between the subscriber computers and at least one network;

 an XML interface comprising a parser front end, a parser section responsive to the parser front end and a building section for communicating with an external device via a series of XML commands and responses such that the gateway device, located at a network access point, supports communications involving the subscriber computers and the external devices without requiring the subscriber computers to support XML commands and responses; and

an internal web server for communicating with both said XML interface and the Internet to thereby facilitate XML-based communications between the gateway device and external devices connected to the Internet.

9. A gateway device according to Claim 8 wherein said parser front end determines the type of operation requested by the external device.

10. A gateway device according to Claim 8 wherein said parser section organizes elements parsed from at least one of an XML command and an XML response and passes at least some of the elements to a requested application.

11. A gateway device according to Claim 10 wherein said parser section also nests the elements to be passed to the requested application within an application programming interface (API) wrapper.

12. A gateway device according to Claim 8 wherein said building section prepares responses to requests received by the gateway device.

13. A gateway device according to Claim 12 wherein said building section assembles results returned by a requested application into an XML response.

14. A method for communicating between a subscriber computer and an external device via a gateway device and the internet, the method comprising:

providing the subscriber computer access to at least one network via the gateway device;

adapting, at the gateway device, to the subscriber computer to facilitate communications between the subscriber computer and at least one network;

receiving an XML command at the gateway device from the external device;

parsing the XML command;

executing the parsed XML command; and
transmitting an XML response from the gateway device to the external device
based upon the execution of the XML command such that the gateway device supports
communications involving the subscriber computer and the external device without requiring the
subscriber computer to support XML commands and responses.

15. A method according to Claim 14 wherein receiving an XML command comprises
receiving an XML command at the gateway device from a billing and content server.

16. A method according to Claim 14 further comprising determining the type of
operation requested by the external device prior to parsing the XML command.

17. A method according to Claim 14 wherein executing the XML command
comprises:

passing the parsed XML command to a respective application program; and
receiving a response from the respective application program.

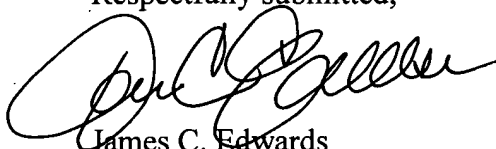
18. A method according to Claim 17 further comprising nesting the parsed XML
command to the requested application within an application programming interface (API)
wrapper between said parsing and passing steps.

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CONCLUSION

For at least the foregoing reasons, Applicants respectfully request that the rejections be reversed.

Respectfully submitted,



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